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seems to be in error when it holds that the inference of intent is necessarily overcome by the exculpatory matter. But if the exculpatory matter actually does overcome the inference, its effect is still not that of an admission merely. A neutralized confession leaves the main fact still established, and the remaining duty of the state is to prove only the intent. For this it is now driven to other evidence. An admission by itself never establishes either the act charged or the intent; it leaves each of these elements still to be proved by other evidence, and to treat a neutralized confession as an admission is to require the state to establish the two essentials of a crime when one is conceded to be already established.

Admissions and confessions are allowed to be introduced as exceptions to the hearsay rule, because of the probability of the defendant having spoken the truth when he declared against his interest; per Eyre, C. J., in *Hardy's Trial* (1794) 24 How. St. Tr. 1093 While exculpatory matter in itself is not within the reason of the exception, still, when it constitutes part of the statement conceding the act, it is allowed in evidence so that the jury may decide what was the true meaning of the defendant, Greenleaf on Evidence, 16th ed. 218, but this is a ground essentially different from that assigned by the court in the principal case.

OBSTRUCTION, REPULSION AND DISCHARGE OF SURFACE WATER.— The law of surface waters has developed from attempts to reconcile with the right of the landowner to deal his land as he will, the right of his neighbor not to be interfered within the use of his. The civil law lays stress upon freedom from interference; the common law upon the right of user, and from the adoption of the one or the other these divergent views by the various courts of this country a conflicting variety of decisions has arisen. The civil law rule creates a servitude between adjoining proprietors, by which the lower proprietor is bound to receive the waters which naturally flow from the estate above, and, in turn, the upper proprietor must not prevent such waters from reaching his neighbor below in the usual manner. The common law rule rejects this doctrine and regards surface water as a common enemy which each may keep off his land as best he can, assimilating the law of surface waters with the law of percolating waters, rather than that of water-courses. The Court of Chancery of New Jersey in its recent holding that one may build bunkers and so change the drainage as to throw water from his land onto the land of his neighbor seems to have extended the common law rule to a point where it is no longer tenable. *Sullivan* v. *Browning* (1904), 58 Atl. 302. The court quotes with approval the following dictum of Bigelow, J., in *Gannon* v. *Hargadon* (Mass. 1865) 10 Allen 106: "nor is it at all material * * * whether a party obstructs or changes the direction and flow of surface water by preventing it from coming within the limits of his land or by erecting barriers, or changing the level of the soil so as to turn it off in a new course *after it has come within his boundaries.*"

Surface water being part of the soil, is the property of him on whose land it lies; when it passes to his neighbor's land it becomes the lat-

ter's property; *Broadbent* v. *Ramsbotham* (Eng. 1856) 11 Ex. 602. In the exercise of his property right therein, one may lawfully retain surface water which would otherwise flow to his neighbor below; his right is one of absolute appropriation and not of user, merely, as is the case with riparian owners; *Swett* v. *Cuts* (1870) 50 N. H 439. He may also refuse to receive drainage from the land above his own and if, in repelling such flow, he damages that land, it is damnum absque injuria; *Barkley* v. *Wilcox* (1881) 86 N. Y. 140; *A. T. & S. F. R. Co.* v. *Hammer* (1879) 22 Kan. 763. So if he deflects it, before it comes upon his land, to property on either side his own, where naturally it would not flow, this too is within his right to protect his own; *Lessard* v. *Strom* (1885) 62 Wis. 112; *Parks* v. *Newburyport* (1857) 10 Gray 28. But once surface water has come upon his land, be it from whatever source, it becomes part of his soil, and it is difficult to see how he can, without committing trespass, thereafter divert it to land where it would not naturally flow. It is quite uniformly held, even in states adopting the civil law rule, that it is a trespass for one to shed the water from his roof upon the land of his neighbor; *Conner* v. *Woodfill* (189) 126 Ind. 85; *Beach* v. *Gaylord* (1890) 43 Minn. 476; *Bellows* v. *Sackett* (N. Y. 1853) 15 Barb. 96; and it should not be any the less a trespass if the flowing be caused by a ditch, a fence or a bunker, as in the principal case; *Adams* v. *Walker* (1867) 34 Conn. 466. This view is followed not only wherever the civil law rule prevails, *Rhodes* v. *Davidheiser* (1890) 133 Pa. 227, but certain of the states following in other respects the common-law rule have repudiated the dictum quoted from *Gannon* v. *Hargadon*. *Taylor* v. *Fickas* (1878) 64 Ind. 167; *Pettigrew* v. *Evansville* (1870) 25 Wis. 223; *Adams* v. *Walker*, supra. See 2 COLUMBIA LAW REVIEW 341, 504. To cast water from a roof an easement would have to be acquired, and it would seem that the right so to deal with surface water should not the less exist without the acquisition of an easement.

THE BURDEN OF PROOF IN CRIMINAL CASES WHERE INSANITY IS A DEFENSE.—The duty of the government and of the defendant where insanity is pleaded as a defense has been the subject of some difference of opinion. It is commonly understood that the duty of the government is to prove sanity in all cases, as a matter of evidence; but its burden of going forward with the proof is lightened by the presumption that sanity is the normal state of the human being. May Cr. L. § 45. In the matter of defense it has frequently been held that the defendant, if he relies on insanity, must prove it by a preponderance of the evidence, and a recent case reasserts this view; *State* v. *Clark* (Wash. 1904) 76 Pac. 98.

The duty of the government to prove sanity is well founded. It rests upon the proposition that the act done had back of it a criminal intent, and that such intent was the characteristic of a sane mind. If the mind was incapable of knowing the character of the act done, it was wanting in an element essential to make the act a crime. Hence, a state of mind capable of having a criminal intent is a vital question with the government, and for this reason